IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13928 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI RANCHHODBHAI BHATI (PARMAR) - Petitioner(s)

Versus

POLICE COMMISSIONER AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,

GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 02/09/2005

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India has challenged the order of detention dated 13th June, 2005, passed by the respondent no.1 Commissioner of Police, Ahmedabad City, in exercise of powers conferred under Section 3(1) of Gujarat Prevention of Antisocial Activities Act, 1985, on the ground that the activities of the detenue are prejudicial to the public order. The detenue being branded as “Bootlegger” is detained on the ground that two different crimes registered bearing C.R.No.220/05 and 962/05 registered with Prohibition Station Western Zone, Ahmedabad City for the offences punishable under Sections 66 (1) (b), 65(a) (e), 81 and 116(b) of Bombay Prohibition Act.

2. The detaining authority has stated that

any other remedy under ordinary law is not sufficient enough to restrict or prevent the antisocial, criminal activities of the detenue and considering his antecedent it was stated that since the petitioner is already on bail qua C.R.No.220/05 dated 06.02.2005 and for second offence bearing C.R.No.962/05 dated 11.06.2005 the detenue is under police remand and on completion of remand period on presentation before the Court the detenue was likely to be enlarged on bail and thereafter there was all likelihood of detenue indulging into prejudicial activities to the public order and also detrimental to the public health. Therefore, to prevent the detenue indulging from such activities the order of detention is passed.

3. The learned advocate for the petitioner has restricted his challenge to the order of

detention on the ground of relevant and credible material do not exist before the detaining authority for arriving at the subjective satisfaction that the detenue may continue in his prejudicial activities, detrimental to the public order or public health, in event of detenue preferring bail application and grant thereof by the Competent Authority of law and may release him on bail. The learned advocate for the petitioner has submitted that subjective satisfaction of the detaining authority, pre-supposes existence of relevant materials in the sense that likelihood of moving for an application and release of accused on the bail by the Competent Authority both are different aspects and for that it is imperative that the detaining authority must apply its mind to the germane and relevant facts before arriving at subjective satisfaction otherwise the same gets

vitiated on result of non application of mind. He has further submitted that besides the above subjective satisfaction of the detaining authority, it must have independent and credible materials to come to the conclusion about the detenue continuing the antisocial or criminal activities prejudicial to the public order or public health. According to the learned advocate for the petitioner both the aspects in the present case are lacking and therefore he has pressed into service the reported decision in 2003 (4) GLR 3738 to strengthen his submissions.

4. That affidavit in reply is filed by the detaining authority and on relying upon the facts, the learned Assistant Government Pleader Mrs. H.B.Punani submitted that the subjective satisfaction arrived at by the detaining authority is based on proper and

adequate materials which do not require any interference of this Hon'ble Court in exercise of powers under Article 226 of the Constitution of India.

5. Having heard the learned counsel for the parties, perused the records of the case including the affidavit in reply filed by the concerned authority, I am of the opinion that exercise of powers under the Statute, empowering the concerned authority to resort to a remedy to preventive detention requires strict adherence to the safeguard enshrined in Article 22 of the Constitution of India. Not only that, but as observed in the above judgment (supra) where the Division Bench of this High Court relied upon the earlier decision reported in AIR 2000 SC 3675 in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others it has been held in

absence of any cogent materials about likelihood of the detenue being released on bail and also in absence of any material for arriving at the conclusion about the detenue being enlarged on bail and further his likelihood of continuing in prejudicial activities disturbing the public order or the public health, subjective satisfaction of the detaining authority stands vitiated due to non application of mind to the germane and relevant materials. In the present case also, no case is made out that relevant material did exist and if it existed and taken into consideration by the detaining authority or arriving at the subjective satisfaction as stated in the penultimate para of the order of detention.

6. In view of the above backdrop of the facts, and description of law on the subject matter I hold that order of detention dated

13/06/2005 passed by the Police Commissioner, Ahmedabad City, respondent no.1, is illegal, contrary to the constitutional provisions as contained under Article 22 of the Constitution of India, is hereby ordered to be quashed and set aside.

7. The detenue Ishwarbhai Ranchhodbhai Bhati (Parmar) is ordered to be set at liberty forthwith if not required in any other offence by any other authority. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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